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Attorneys for Federal Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

NATIVE ECOSYSTEMS COUNCIL,)
<i>et al.</i> ,) CV 18-00087-DLC
Plaintiffs,)
)
v.) STIPULATED FEE SETTLEMENT
)
LEANNE MARTEN, <i>et al.</i> ,)
Federal Defendants,)
)
and)
)
SUN MOUNTAIN LUMBER, INC.,)
Defendant-Intervenor.)

INTRODUCTION

Plaintiffs Native Ecosystems Council, *et al.*, (“Plaintiffs”) and Federal Defendants Leann Marten, *et al.* (“Federal Defendants”) enter into the following Stipulated Fee Settlement Agreement (“Agreement”) and state as follows:

WHEREAS, Plaintiffs’ lawsuit alleges violations of the National Environmental Policy Act, the National Forest Management Act, and the Endangered Species Act, *see* ECF No. 1 ¶¶ 139-178, stemming from the approval of the North Hebgen Project;

WHEREAS, on March 26, 2020, the District Court granted in part and denied in part Plaintiffs’ motion for summary judgment. *See* ECF No. 85;

WHEREAS, on June 15, 2020, Plaintiffs filed a motion for attorneys’ fees and costs. *See* ECF No. 95;

WHEREAS, the parties have reached an agreement that obviates the need for any litigation regarding Plaintiffs’ fees and costs.

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Federal Defendants agree to pay the lump sum of one hundred twenty thousand dollars (\$120,000.00) in full and complete satisfaction of any and all claims, demands, rights, and causes of action pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d), and the ESA, 16 U.S.C. § 1540(g),

and/or any other statute and/or common law theory, for all attorneys' fees, costs, and expenses incurred by Plaintiffs in this litigation.

2. Plaintiffs agree to withdraw their motion for attorney fees and costs (ECF No. 95) within seven days of the Court order approving the Settlement Agreement if the Court does not *sua sponte* dismiss the fee motion as moot.

3. Federal Defendants shall make the payment required by Paragraph 1 and the agreed order below by electronic funds transfer to Plaintiffs' Montana IOLTA lawyer's trust account at U.S. Bank, Public Interest Defense Center P.C. Montana IOLTA Trust Account.

4. Plaintiffs agree to furnish Federal Defendants with the information necessary to effectuate the payment required by Paragraph 1 of this stipulation. Federal Defendants agree to submit necessary paperwork for the processing of the attorneys' fees award to the Department of Treasury's Judgment Fund Office within 10 business days of the Court's approval of this Agreement or the receipt of the information described in this Paragraph, whichever is later.

5. Plaintiff agrees to accept Federal Defendants' payment of \$120,000.00 in full satisfaction of any and all claims for attorneys' fees and costs of litigation incurred in this matter to date. Plaintiffs agree that receipt of this payment from Federal Defendants shall operate as a release of Plaintiffs' claims for attorney's fees and costs in this matter to date.

6. Except for the obligations specifically required under this Settlement Agreement, Plaintiffs agree to hold harmless Federal Defendants in any litigation, further suit, or claim arising from the payment of the agreed-upon \$120,000.00 settlement amount, including any claims that may arise as to any apportionment of the payment amount to Plaintiffs and Plaintiffs' counsel.

7. Plaintiffs acknowledge that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d), 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the attorney fee award Plaintiffs' delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

8. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement that Federal Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

9. This Settlement Agreement does not represent an admission by Plaintiffs or Federal Defendants to any fact, claim, or defense in any issue in this lawsuit. This Settlement Agreement has no precedential value and shall not be used as evidence of such in any other matter.

10. This Agreement shall be binding on the parties and their successors, agents, designees, employees, and all those acting by and through their authority. The parties agree that this Stipulation was negotiated in good faith and that this

Stipulation constitutes a resolution of claims that were denied and disputed by the parties. By entering into this Stipulation, the parties do not waive any claim or defense.

11. The undersigned representatives of each party certify that they are fully authorized by the parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein.

12. The parties hereby jointly and respectfully request that the Court review and approve the terms of this stipulation, and retain jurisdiction to enforce its terms. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

Respectfully submitted this 29th day of July, 2020.

/s/ Rebecca K. Smith
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